IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

LA.App. No. 938 of 2002(D)

LAR.7/1996 of SUB COURT, THALASSERY
.....

APPELLANT/ PETITIONER:

SRI. K.N. PURUSHOTHAMAN
S/O. RAGHAVAN, DREAM LAND STUDIO KEELAM BAZAR, MUZHAPPILANGADI.

BY ADV. SRI.V.RAJAGOPAL

RESPONDENT/RESPONDENT:

SPECIAL TAHSILDAR, LAND ACQUISITION(NH), KANNUR.

BY GOVERNMENT PLEADER SRI. K.V. MANOJKUMAR.

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 15/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A. NO. 938 OF 2002

Dated this the 15th day of November, 2007.

J U D G M E N T

Harun-Ul-Rashid, J.

This appeal is filed by the claimant against the judgment and decree in L.A.R. No. 7/1996 on the file of the Sub Court, Thalassery. By the impugned judgment and decree passed, the reference court held that the claimant is not entitled for enhanced compensation as prayed for and therefore dismissed the reference.

2. The extent acquired in this case is 1.55 cents of land corresponding to 69 square metres. The property was acquired for the purpose of realignment of N.H.17. Section 4(1) notification was published on 15.07.1993. The Land Acquisition Officer has given a total amount of compensation of Rs. 4,40,992/- to the claimant.

3. The acquisition of land includes a portion of the building. The acquisition authorities acquired the whole building situated in the property and granted compensation for the same. The

claimant claimed enhanced land value for the land and the entire building which was demolished consequent on the acquisition. The claimant claimed land value at the rate of Rs. 50,000/- per cent and Rs. 6 lakhs for the demolished building. In support of his claim, claimant examined AWs 1 and 2 and marked Exhibits A1 and A2. Exhibits C1 and C2 are marked as court exhibits. The respondent examined RW1 and RW2 and marked Exhibits B1 and B2. Along with acquired area of 69 sq. meters, a small corner portion of verandah of the residential building was also included as part of the acquisition. The court below held that the acquisition of the whole building and its demolition subsequently is not an authorized act when the acquired portion of the building was only a small portion of the building. After referring to Section 49 of the Land Acquisition Act, the court below came to the conclusion that there is no requisition from the owner of the building to acquire the entire building and further the Land Acquisition Officer did not comply with the provisions as envisaged under Section 49 of the Act. The court held that since the entire extent where the building situated was not acquired or taken possession of by Land Acquisition Officer without acquiring

the entire building, the Land Acquisition Officer was not justified in valuing the whole building and paying the value of the building to the claimant. The court also held that due to the unwarranted act of the Land Acquisition Officer, Government has sustained heavy loss. In view of the findings so arrived at, the court held that the land value and the value of the improvement given by the Land Acquisition Officer would be reasonable and fair and in such circumstance the land value need not be given at the enhanced rate as contended by the claimant.

4. The Land Acquisition Officer fixed the land value at the rate of Rs. 1,960/- per cent as against the claim of Rs. 50,000/- per cent. So also the value of the building assessed by the PWD authorities at Rs. 2,73,316/- was accepted by the court. The court below for the reasons stated elaborately stating the circumstances under which the whole building was demolished and value given, the court desists from enquiring into the question of adequacy of the compensation of the land and the building.

5. Before this Court the Joint Secretary, Revenue Department had filed a statement narrating in detail the enquiry

made regarding the payment of compensation for the entire building and demolition of the entire building etc. In the statement it is reported that after the enquiry reports submitted by the Deputy Collector (Vigilance), Kozhikode, another report was prepared after due enquiry by the District Collector, Kannur where it is reported that the claimant had constructed a new concrete building in the place of the old tiled building and the present building is situated 5 metres away from the National Highway and that the materials of the old building was sold by PWD through public auction. It is also reported that there was no misconduct on the part of the Land Acquisition Officer in acquiring the old house in full and therefore recommended for dropping any further action in the matter.

6. In the light of the conclusions arrived at after detailed enquiry as stated above, it can be seen that the acquisition of the land and the acquisition of the entire building and the subsequent demolition, and auctioning of the materials of the old building are all done in a legal and valid manner. From the subsequent developments and the report of the enquiry, it can only be concluded that the acquisition of the property and the whole

building is legal and valid. Therefore, the appellant-claimant is entitled to a fair and reasonable compensation for the property and the building. Since the court below has not enquired into the adequacy of the compensation for the acquired property and the building, it is necessary that the matter has to be remanded for fresh consideration in accordance with law.

In the result, the judgment and decree under appeal are set aside and the case is remanded for de novo consideration. There will be no order as to costs. The court below shall dispose of the matter within a period of six months from the date of receipt of a copy of this judgment. In view of the remand as above, the appellant-claimant shall be entitled to refund of the court fee.

KURIAN JOSEPH
JUDGE

HARUN-UL-RASHID
JUDGE

smp

KURIAN JOSEPH &
HARUN-UL-RASHID, JJ.

L.A.A. NO. 938 OF 2002

J U D G M E N T

15.11.2007